

ARGUMENTS/REMARKS

Favorable consideration of this application in light of the following discussion is respectfully requested.

Claims 7-18 are pending in the application, with Claims 3-6 cancelled and Claims 7-18 added by the present amendment.

In the outstanding Office Action, Claims 3-6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nakamura et al. (U.S. Patent No. 5,740,168) in view of Adachi (U.S. Patent No. 6,084,884).

New independent Claims 7, 10, 13 and 16 substantially correspond to previously pending Claims 3-6, albeit amended to recite additional features disclosed in Applicants' originally filed specification.¹ No new matter is added.

Briefly recapitulating, new independent Claims 7, 10, 13 and 16 are directed to a radio communication method and corresponding mobile radio communication device employing CDMA (Code Division Multiple Access) for radio access and providing multi-rate transmission. Claims 7, 10, 13 and 16 differ from Claims 3-6 by reciting a feature of transmitting a completion message to indicate completion of the step of switching at the mobile stations. The invention ensures accurate synchronization of the base station and mobile.²

Nakamura describes a method for code switching, including the transmission of a timing signal from a base station to a mobile station.³ However, Nakamura does not disclose or suggest Applicant's disclosed releasing a code after switching and sending a completion message. Thus, Nakamura fails to disclose or suggest "transmitting a completion message to indicate completion of the step of switching the first code to the second code at the mobile

¹ Specification, page 26, line 23 through page 29, line 29.

² Specification, paragraphs 121-128.

station” as recited in Claims 7 and 10. Similarly, Nakamura fails to disclose or suggest switching unit is further configured to transmit a completion message to indicate completion of the switching as recited in amended Claims 13 and 16. Applicants have considered the Adachi reference and submit Adachi does not cure the deficiencies of Nakamura.

MPEP §706.02(j) notes that to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Also, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant’s disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Without addressing the first two prongs of the test of obviousness, Applicants submit that the Official Action does not present a *prima facie* case of obviousness because both Nakamura and Adachi fail to disclose all the features of recited in Applicants’ claimed invention.

³ Nakamura, Figures 4, 20B, and 25.

Application No. 10/796,092
Reply to Office Action of June 23, 2005

Accordingly, in light of the previous discussion, Applicants respectfully submit that the present application is in condition for allowance and respectfully request an early and favorable action to that effect.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Eckhard H. Kuesters
Attorney of Record
Registration No. 28,870
Michael E. Monaco
Registration No. 52,041

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
EHK/MEMO/rca/maj
I:\ATTY\MM\MAMENDMENT\7459\249310US.AM1_092305.DOC